

BEFORE THE FEDERAL ELECTION COMMISSION

2016 FEB 30 AM 9:37

MUR 6912) DISMISSAL AND
Arizona Republican Party) CASE CLOSURE UNDER THE
and Jonathan Lines as treasurer) ENFORCEMENT PRIORITY CELA
Robert Graham, Chairman) SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

The Office of General Counsel has scored MUR 6912 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the reasons set forth below, the Office of General Counsel recommends that the Commission dismiss the allegations that Respondents Arizona Republican Party and Jonathan Lines in his official capacity as treasurer (collectively "the Committee") violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b)(3). The Office of General Counsel also recommends that the Commission

¹ The EPS rating information is as follows:
filed: March 17, 2015.

1 find no reason to believe that Respondent Robert Graham ("Graham") violated the Act or
2 Commission regulations.

3 Complainant Ardith Hildebrant ("Complainant") states that she conducted a "preliminary
4 review" of the Committee's 2013 and 2014 financial disclosure reports.² Compl. at 1. As a
5 result of this review, the Complainant discovered several areas of concern. *Id.* at 1. First, she
6 maintains that an "extraordinary" number of transfers occurred between the Committee's federal
7 and nonfederal accounts during 2013 and 2014. *Id.*, see also *id.*, Attach. A (described as
8 Committee's "Schedule of Transfers Between Nonfederal and Federal Account"). The
9 Complainant also alleges that Graham, who was elected to be the Committee's Chair in January
10 2013, had been a defendant in an action brought by California's Fair Political Practices
11 Commission ("FPPC") against "Graham's organization," Americans for Responsible Leadership
12 ("ARL"). *Id.* at 2.³ According to the Complainant, Graham was ordered to pay a portion of the
13 civil penalty. *Id.*

14 The Complainant contends that the Committee paid "unbelievably high" and "exorbitant"
15 merchant fees to BMO-Harris Bank ("BMO") and reported numerous disbursements to BMO
16 that lacked accompanying memo entries. *Id.* at 3; see also *id.*, Attach. C, Schedule of Merchant
17 Fees to BMO (mostly occurring between July 2014 and September 2014 and totaling
18 \$41,277.18) and Attach. D, Disbursements to BMO with no Descriptions (occurring between

² In its Response, the Committee observes that the Complainant had been defeated for the post of Committee treasurer by Jonathan Lines, in an election held shortly after she filed the Complaint. Resp. at 1.

³ ARL, an Arizona non-profit organization, made an anonymous \$11 million contribution to a California campaign committee, but later acknowledged that it was an intermediary, not the true source of the funds. *Id.*; see also *id.*, Attach. B (Stipulation for Entry of Judgment, *FPPC v. ARL and Center to Protect Patient Rights*, dated Oct. 24, 2013).

1 February 1, 2013 and March 1, 2014 and totaling \$83,329.57).⁴ Finally, the Complainant asserts
2 that the Committee has run "negative bank balances for the last two months" due to Graham's
3 apparent "failure to record a deposit." *Id.* at 3, *see also id.*, Attach. E (a summary of the
4 Committee's 2014 Post-General Report discloses a negative cash on hand of \$185,273 at the
5 beginning of the reporting period, and a negative cash on hand of \$576,425 at the close of the
6 reporting period).

7 The Committee's Response asserts that the transfers between its nonfederal account and
8 federal account, described in the Complaint as "extraordinary" in number, were in fact "typical"
9 transfers from its nonfederal account to pay the nonfederal share of allocated expenses.
10 Committee Resp. at 1. According to the Response, at least 15 percent of expenses were allocated
11 to the federal account, as there were no Presidential or Senate candidates on the ballot. *Id.* As
12 for the case brought by FPPC against ARL, the Committee asserts that there is no connection
13 between ARL and itself, except that Graham is a "former board member of ARL." *Id.* at 2.

14 In response to the Complainant's allegations concerning BMO Harris, the Committee
15 explains that some of its employees use credit cards issued by "our bank, in this case BMO
16 Harris" and that the same bank also provided some of the Committee's merchant credit card
17 processing services. *Id.* According to the Committee, its reports identify this activity as
18 "admin," with "merchant fees" listed as the purpose, and that payments to BMO Harris were for
19 "admin" and "merchant fees."⁵ Finally, the Committee does not dispute that its 2014 Post-
20 General Report disclosed a negative cash on hand ending balance, but it states that it filed an

⁴ The Committee's filings during 2013 and 2014 did not appear to contain all of the transactions listed in Attachments A, C, and D to the Complaint.

⁵ The Committee states that it will confer with counsel as to whether it should file an amendment to clarify which of the disbursements for administrative costs were "merchant fees" and which were not. *Id.*

1 amended 2014 Post-General Report⁶ on January 15, 2015, which "accurately reflects incoming
2 transfers from affiliated committees." *Id.*⁷

3 Financial disclosure reports filed by party committees must disclose the amount of cash
4 on hand at the beginning of the reporting period, the total amount of all receipts for the reporting
5 period and calendar year, and the total amount of all disbursements for the reporting period and
6 the calendar year. 52 U.S.C. § 30104(b)(1), (2) and (4). Disbursements that are itemized must
7 include a brief statement or description of why the disbursements were made. 11 C.F.R.
8 § 104.3(b)(3)(i)(A).

9 State, district and local party committees that engage in both federal and nonfederal
10 elections may choose to set up both federal and nonfederal accounts. 11 C.F.R. § 102.5(a)(1)(i).
11 Because administrative and other mixed federal/nonfederal expenses may not be paid from a
12 nonfederal account, such committees may transfer funds from the nonfederal account to the
13 federal account to cover the nonfederal share of allocable expenses. *Id.*, *see also* 11 C.F.R.
14 §§ 106.7(c)(2), (f). Committees use a fixed percentage ratio, which sets forth the minimum
15 federal share, for allocating administrative expenses. *See* 11 C.F.R. § 106.7(d)(2); *see also*
16 Campaign Guide for Political Party Committees at 102. If neither a Presidential candidate nor a
17 Senate candidate appears on the ballot, at least 15 percent of the expenses must be allocated to
18 the federal account. *See* 11 C.F.R. §§ 106.7(d)(2)-(3). During each reporting period, a
19 committee must also disclose transfers from the nonfederal account to the federal account to pay
20 the allocated nonfederal portion of administrative and other allocable expenses, and it must

⁶ *See also* Committee's earlier report, its 2014 Pre-General, which disclosed a negative ending cash on hand balance of \$185,273.39. The Report was amended on Dec. 17, 2014, to disclose a positive ending cash balance of \$28,599.49.

⁷ The Committee's Response does not address the specific transfers and disbursements set forth in Attachments A, C and D to the Complaint.

1 disclose itemized payments for such expenses, showing the allocated federal and nonfederal
2 shares. See Campaign Guide for Political Party Committees at 104-5.

3 As the Committee explains, it transferred funds from its nonfederal account to meet
4 allocable expenses. It appears that the Committee used a 21 percent ratio on its February and
5 March 2013 monthly reports and, then, permissibly switched to a 15 percent ratio for the
6 remainder of the 2013-14 cycle.

7 The Committee's 2013 and 2014 financial disclosure reports reflect thirty disbursements
8 to BMO-Harris with the description "Memo Entries: See Below" for a total of \$83,085 in
9 disbursements. All of these disbursements include supporting memo entries, in apparent
10 contradiction of Complainant's claim that the memo entries had been omitted. It appears that
11 eleven disbursements to BMO-Harris, as disclosed on the Committee's 2014 Amended July
12 Monthly Report filed on December 16, 2014, lacked any description of purpose; however, the
13 Committee subsequently amended its 2014 July Monthly Report on June 30, 2015 to provide
14 statements of purpose for the disbursements.

15 Therefore, in light of the substantial compliance by the Committee coupled with its
16 corrective action, the Office of General Counsel recommends that the Commission exercise its
17 prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), and dismiss the
18 allegation that the Arizona Republican Party and Jonathan Lines in his official capacity as
19 treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b)(3). Additionally, this Office
20 recommends that the Commission find no reason to believe that Robert Graham violated the Act
21 or Commission regulations, as the record does not reflect a violation of the Act or Commission

1 regulations by this respondent. Finally, this Office recommends that the Commission approve
2 the attached Factual and Legal Analysis and the appropriate letters, and close the file.


3 **RECOMMENDATIONS**

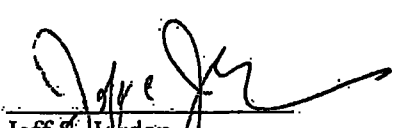
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5 1. Dismiss the allegations that the Arizona Republican Party and Jonathan Lines in his
6 official capacity as treasurer, violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(b)(3);
7
8 2. Find no reason to believe that Robert Graham violated the Federal Election Campaign
9 Act of 1971, as amended, or Commission regulations;
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11 3. Approve the attached Factual and Legal Analysis and the appropriate letters; and
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13 4. Close the file.

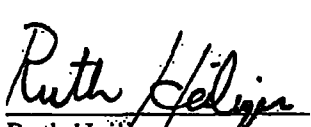
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